

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

BECKLEY DIVISION

LISA Y. HENDERSON, Acting Regional
Director of the Tenth Region of the
NATIONAL LABOR RELATIONS BOARD,
for and on behalf of the NATIONAL LABOR
RELATIONS BOARD,

Petitioner,

v.

Civil Action No. 5:16-CV-06307

GREENBRIER VMC, LLC d/b/a
GREENBRIER VALLEY MEDICAL CENTER,

Respondent.

ANSWER

As the Respondent in the above-captioned case, Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center (hereafter, “Greenbrier” or the “Hospital”) hereby answers the Petition for Injunction Under Section 10(j) of the National Labor Relations Act, As Amended (hereafter, the “Petition”), which was filed by Ms. Lisa Y. Henderson, for and on behalf of the National Labor Relations Board (hereafter, the “Board”), on July 13, 2016, as follows:

(1) Greenbrier denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth by Paragraph (1) of the Petition, except admits that the Board is an agency of the United States.

(2) Greenbrier admits that the Court has jurisdiction over the Petition under Section 10(j) of the National Labor Relations Act, as amended, (hereafter, the “Act”). See 29 U.S.C. § 160(j).

(3) Greenbrier admits that the documents attached to the Petition as “Exhibit A” and “Exhibit B” were filed with the Board, but denies knowledge or information sufficient to form a belief as to when the documents were filed with the Board.

(4) Greenbrier denies the allegations set forth by Paragraph (4) of the Petition, except admits that the Board’s General Counsel (hereafter, for ease of reference, the “General Counsel”) issued the document attached to the Petition as “Exhibit C.”

(5) Greenbrier denies the allegations set forth by Paragraph (5) of the Petition and avers that, on February 29, 2016, a hearing commenced in Cleveland, Ohio before Administrative Law Judge Eleanor Laws in connection with a Consolidated Complaint that was issued by the General Counsel in Case Nos. 08-CA-117890, *et. al.*, and as part of these proceedings, Judge Laws issued the Order attached to the Petition as “Exhibit D.”

(6) Greenbrier admits the allegation that the General Counsel filed with the Board the document attached to the Petition as “Exhibit E” and avers that, on June 16, 2016, the Hospital filed with the Board an Opposition and Cross-Motion for Summary Judgment. Greenbrier also denies knowledge or information sufficient to form a belief as to the reason(s) why the General Counsel has failed to schedule a hearing on the Consolidated Complaint issued in Case Nos. 10-CA-167330 and 10-CA-168085.

(7) Greenbrier denies the allegations set forth by Paragraph (7) of the Petition.

7(a) Greenbrier admits the allegations set forth by Paragraph 7(a) of the Petition.

7(b) Greenbrier admits the allegations set forth by Paragraph 7(b) of the Petition.

7(c) Greenbrier admits the allegations set forth by Paragraph 7(c) of the Petition.

7(d) Greenbrier admits the allegations set forth by Paragraph 7(d) of the Petition.

7(e) Greenbrier denies the allegations set forth by Paragraph 7(e) of the Petition.

7(f) Greenbrier admits the allegations as they relate to Mr. Hanna. Greenbrier denies the allegations as they relate to Ms. Lilly and avers that, from on or about February 24, 2013 to on or about October 5, 2014, she held the position of "ICU Director," and during that period of time, Ms. Lilly was a supervisor and agent of Greenbrier within the meaning of Sections 2(11) and 2(13) of the Act, respectively. Greenbrier denies the allegations as they relate to Ms. Hayes.

7(g) Greenbrier denies that Ms. Ellis held the position of "Director, Employee Relations or Human Resources Representative" and avers that she held the position of "Director, Employee Relations." Greenbrier admits that Ms. Ellis has been an agent of the Hospital within the meaning of Section 2(13) of the Act.

7(h) Greenbrier denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth by Paragraph 7(h) of the Petition.

7(i) Greenbrier admits the allegations set forth by Paragraph 7(i) of the Petition.

7(j)(1) Greenbrier admits the allegations set forth by Paragraph 7(j)(1) of the Petition.

7(j)(2) Greenbrier admits the allegations set forth by Paragraph 7(j)(2) of the Petition.

7(j)(3) Greenbrier denies the allegations set forth by Paragraph 7(j)(3) of the Petition and avers that, on May 6, 2016, the United States Court of Appeals for the Fourth Circuit issued a Decision in NLRB v. Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, et. al., 821 F.3d 534, which speaks for itself.

7(k) Greenbrier denies the allegations set forth by Paragraph 7(k) of the Petition.

7(l) Greenbrier admits the allegations set forth by Paragraph 7(l) of the Petition.

7(m) Greenbrier admits the allegations set forth by Paragraph 7(m) of the Petition.

7(n) Greenbrier admits the allegations set forth by Paragraph 7(n) of the Petition.

7(o) Greenbrier denies the allegations set forth by Paragraph 7(o) of the Petition, but avers, subject to and without waiver of the Hospital's response

to Paragraph 7(e) of the Petition, that the Hospital received a written communication from the NNOC dated August 19, 2015.

7(p) Greenbrier admits the allegations set forth by Paragraph 7(p) of the Petition.

7(q) Greenbrier denies the allegations set forth by Paragraph 7(q) of the Petition.

7(r) Greenbrier denies the allegations set forth by Paragraph 7(r) of the Petition.

7(s) Greenbrier denies the allegations set forth by Paragraph 7(s) of the Petition, but avers, subject to and without waiver of the Hospital's response to Paragraph 7(e) of the Petition, that the Hospital received a written communication from the NNOC dated August 19, 2015.

7(t) Greenbrier denies the allegations set forth by Paragraph 7(t) of the Petition.

7(u) Greenbrier denies the allegations set forth by Paragraph 7(u) of the Petition.

7(v) Greenbrier denies the allegations set forth by Paragraph 7(v) of the Petition.

7(w) Greenbrier denies the allegations set forth by Paragraph 7(w) of the Petition.

7(x) Greenbrier denies the allegations set forth by Paragraph 7(x) of the Petition.

7(y) Greenbrier denies the allegations set forth by Paragraph 7(y) of the Petition.

7(z) Greenbrier admits the allegations set forth by Paragraph 7(z) of the Petition.

7(aa) Greenbrier denies the allegations set forth by Paragraph 7(aa) of the Petition.

7(bb) Greenbrier denies the allegations set forth by Paragraph 7(bb) of the Petition.

7(cc) Greenbrier denies the allegations set forth by Paragraph 7(cc) of the Petition.

7(dd) Greenbrier denies the allegations set forth by Paragraph 7(dd) of the Petition.

(8) Greenbrier denies the allegations set forth by Paragraph (8) of the Petition.

(9) Greenbrier denies the allegations set forth by Paragraph (9) of the Petition.

(10) Greenbrier denies the allegations set forth by Paragraph (10) of the Petition.

RESPONSE TO “WHEREFORE” ALLEGATIONS

In response to Paragraph (1) of the “**WHEREFORE**” allegations, the Hospital denies that the injunction described by the Board would be just and proper. In response to Paragraph (2) of the “**WHEREFORE**” allegations, the Hospital denies that the Order described by the Board would be just and proper.

FIRST AFFIRMATIVE DEFENSE

The Petition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Petitioner has no basis to seek any equitable remedy based upon the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

The Petitioner should be estopped from seeking the relief sought by the Petition.

FOURTH AFFIRMATIVE DEFENSE

The Petition should be barred based upon the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

The Petitioner's request for relief is arbitrary, capricious and discriminatory.

SIXTH AFFIRMATIVE DEFENSE

The Petition violates Greenbrier's rights to Due Process guaranteed by the Fifth Amendment of the Constitution of the United States.

SEVENTH AFFIRMATIVE DEFENSE

The Petition violates Greenbrier's rights to Equal Protection guaranteed by the Fifth Amendment of the Constitution of the United States.

EIGHTH AFFIRMATIVE DEFENSE

Greenbrier avers that the Certification of Representative underlying the Petitioner's claim that the Hospital has unlawfully refused to recognize and

bargain with the Union is not valid and is unenforceable as a matter of law, insofar as the Certification is the byproduct of a Consent Election Agreement, which was approved on behalf of the Board by Mr. Claude Harrell, the Regional Director for Region 10 of the Board, during a period of time when the Board lacked the quorum required by Section 3(b) of the Act. See *Noel Canning v. NLRB*, 134 S. Ct. 2550 (2014); *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

NINTH AFFIRMATIVE DEFENSE

Greenbrier avers that the Certification of Representative underlying the Petitioner's claim that the Hospital has unlawfully refused to recognize and bargain with the Union is not valid and is unenforceable as a matter of law, insofar as the Certification was issued on behalf of the Board by Mr. Claude Harrell, the Regional Director for Region 10 of the Board, during a period of time when the Board lacked the quorum required by Section 3(b) of the Act. See *Noel Canning v. NLRB*, 134 S. Ct. 2550 (2014); *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

TENTH AFFIRMATIVE DEFENSE

The United States Supreme Court and the Board have declared that the singular purpose of an acute care hospital is to provide essential, often critical care and treatment to patients. See *Beth Israel Hospital v. NLRB*, 437 US 483, 511-512 (1978); *NLRB v. Baptist Hospital, Inc.*, 442 US 773, 791-793 (1979); *St. John's Hospital & School of Nursing, Inc.*, 222 NLRB 1150 (1976).

Further, the United States Supreme Court held in *First National*

Maintenance v. NLRB, 452 US 666 (1981), that management must be free from the constraints of the collective bargaining process to the extent necessary for the running of its business, and particularly with respect to matters that go to the heart of its entrepreneurial core.

Patient care is the heart and core of the business of Greenbrier and decisions relative to the delivery of patient care, the monitoring of patient care and the rectifying of any perceived inadequacies or irregularities in the quality or safety of the patient care provided by the Hospital are within the prerogative of the Hospital's management in fulfilling its mission and satisfying all relevant regulatory requirements associated with the license issued to the Hospital.

There is no duty to bargain on the part of Greenbrier regarding decisions relative to the delivery of patient care, the monitoring of patient care and the rectifying of any perceived inadequacies or irregularities in the quality or safety of the patient care provided by the Hospital.

ELEVENTH AFFIRMATIVE DEFENSE

For any proposal rejected by the Hospital in the context of the parties' negotiations toward a collective bargaining agreement, the Hospital had a reasonable and justifiable basis for its unwillingness to agree to the proposal.

TWELFTH AFFIRMATIVE DEFENSE

The Petition, in part, relies upon allegations that are subject to and in contravention of the federal doctrine of preemption.

THIRTEENTH AFFIRMATIVE DEFENSE

The allegations set forth by the Petition are in derogation of 29 U.S.C. § 173 and 29 U.S.C. § 174.

FOURTEENTH AFFIRMATIVE DEFENSE

The allegations set forth by the Petition are in derogation of the Administrative Procedures Act, 5 U.S.C. §§ 551 *et. seq.*

FIFTEENTH AFFIRMATIVE DEFENSE

The allegations set forth by the Petition are in derogation of 29 U.S.C. § 160(b).

WHEREFORE, Respondent, Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center, respectfully requests that the Petitioner's Petition for Injunction Under Section 10(i) of the National Labor Relations Act, As Amended against it be dismissed with prejudice; that this Defendant be awarded the reasonable costs and attorney fees necessarily incurred in the defense of this action; and that this Defendant be granted such other relief as this Court deems appropriate.

GREENBRIER VMC, LLC D/B/A
GREENBRIER VALLEY MEDICAL CENTER,

By Counsel.

/s/ W.E. Sam Fox, II
W.E. Sam Fox, II (WV Bar No. 5178)
W. Scott Evans (WV Bar ID # 5850)
Flaherty Sensabaugh Bonasso PLLC
P. O. Box 3843
Charleston, West Virginia 25338-3843

Phone: (304) 345-0200
sfox@flahertylegal.com
sevans@flahertylegal.com

and

Bryan T. Carmody (Bar ID No. 418428)
Carmody & Carmody, LLP
134 Evergreen Lane
Glastonbury, CT 06033-3706
bryancarmody@bellsouth.net

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CERTIFICATE OF SERVICE

I, W. E. Sam Fox, II, counsel for Respondent, Greenbrier VMC, LLC d/b/a
Greenbrier Valley Medical Center, do hereby certify that on the 4th day of August,
2016, I presented the foregoing **Answer** to the Clerk of Courts for filing and
uploading to the CM/ECF system, which will send notification of such filing to the
following CM/ECF participants:

Joel Ruben White, Esq.
National Labor Relations Board
Sub-Region 11, Suite 200
4035 University Parkway
Winston-Salem, NC 27199

/s/ W.E. Sam Fox, II

W.E. Sam Fox, II (WV Bar No. 5178)
W. Scott Evans (WV Bar ID # (5850)
Flaherty Sensabaugh Bonasso PLLC
P. O. Box 3843
Charleston, West Virginia 25338-3843
Phone: (304) 345-0200
sfox@flahertylegal.com
sevens@flahertylegal.com

and

Bryan T. Carmody (Bar ID No. 418428)
Carmody & Carmody, LLP
134 Evergreen Lane
Glastonbury, CT 06033-3706
bryancarmody@bellsouth.net